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MONITORING THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN

Violence against women in all its forms

Report of the Secretary-General

Summary

By its resolution 1991/18 of 30 May 1991, the Economic and Social Council requested the Secretary-General to convene a meeting of experts to address the issue of violence against women and to discuss the possibilities of preparing an international instrument on that subject. The Expert Group Meeting on Violence against Women took place at Vienna from 11 to 15 November 1991. An annex to the present report contains a summary of the discussions of the Expert Group and its recommendations, including a draft declaration on violence against women.

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CONTENTS

	Paragraphs	Page
BACKGROUND	1-6	3
Annex. Recommendations and summary of discussion of the Expert Group Meeting on Violence against Women	1-38	4
A. Recommendations	1-8	4
B. Summary of discussion	9-38	5
Appendix. Draft declaration on violence against women		11

BACKGROUND

1. The Economic and Social Council, on the basis of a recommendation of the Commission on the Status of Women at its thirty-fifth session, has adopted resolution 1991/18 entitled "Violence against women in all its forms". In that resolution, inter alia, the Council urged Member States to adopt, strengthen and enforce legislation prohibiting violence against women, and to take all appropriate administrative, social and educational measures to protect women from all forms of physical and mental violence. The Council also recommended the development of a framework for an international instrument that would explicitly address the issue. It requested the Secretary-General, through the Division for the Advancement of Women, to convene a meeting of experts to address the issue of violence against women and to discuss the possibilities of preparing such an international instrument and the elements to be contained therein.

2. Accordingly, an Expert Group Meeting on Violence against Women was convened at Vienna from 11 to 15 November 1991. It was attended by experts from all regions appointed by the Secretary-General in their individual capacity: Margaret Alva (India), Shirley V. Bell (Barbados), Ben Bussink (Netherlands), Carlota Bustelo Garcia Del Real (Spain), Florence Butegwa (Zimbabwe), Rebecca J. Cook (Canada), Irene R. Cortes (Philippines), Hina Jilani (Pakistan), Helen L'Orange (Australia), Naziha Mazhoud (Tunisia), Maria Isabel Plata (Colombia), Simone Rozes (France), Marília Sardenberg (Brazil) and Papa Saër Tall (Senegal). Among the experts were one member of the Committee on the Elimination of Discrimination against Women and one member of the Committee on Crime Prevention and Control.

3. In addition, the Expert Group was attended by 58 observers from Member States, bodies of the United Nations system, intergovernmental and non-governmental organizations, research institutes and universities, and representatives of the media. The observers provided information and comments to the experts. However, the recommendations were adopted by the experts only. The meeting was exploratory and the discussion encompassed a wide range of different topics and opinions, incorporating some divergent positions, according to different legal systems, cultures and traditions.

4. The Expert Group elected the following officers: Irene Cortes (Chairperson), Florence Butegwa and Maria Isabel Plata (Vice-Chairpersons) and Rebecca Cook (Rapporteur).

5. As requested by the Economic and Social Council, the report of the Expert Group is submitted herewith to the Commission on the Status of Women at its thirty-sixth session. In order to meet the recommendation of the Council that a framework for an international instrument should be developed in consultation with the Committee on the Elimination of Discrimination against Women (CEDAW), this report is also being made available to that Committee at its eleventh session for its comments, which will be conveyed to the Commission.

6. The recommendations and a summary of the discussion of the Expert Group are presented in the annex.

Annex

RECOMMENDATIONS AND SUMMARY OF DISCUSSION OF THE EXPERT GROUP MEETING ON VIOLENCE AGAINST WOMEN

A. Recommendations

1. The Expert Group recommended the strategies mentioned below as incremental approaches.

2. The Expert Group recommended the acceleration of the elaboration and strengthening of the general recommendations of the Committee on the Elimination of Discrimination against Women to improve the reporting on violence against women by States parties to the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex) to the Committee.

3. The Expert Group recommended the appointment of a special thematic rapporteur on violence against women, whose terms of reference would include:

(a) Determining the pervasive and egregious nature of violence against women;

(b) Receiving information from Governments, intergovernmental and non-governmental organizations and any other relevant sources;

(c) Responding effectively to information on violence against women;

(d) Recommending measures to prevent continuing violence against women.

4. The Expert Group recommended that the existing procedures for communications to the Commission should be strengthened.

5. In the event that the above-mentioned mechanisms should prove ineffective in eliminating violence against women, the Expert Group recommended the consideration of an optional protocol or protocols to the Convention on the Elimination of All Forms of Discrimination against Women, which would be open to ratification or accession by States parties to that Convention. The Expert Group considered three different protocols:

(a) A substantive protocol containing a definition of violence against women, such as the one included in the draft declaration on violence against women (see appendix). It would give such a definition international legal effect and it would help to crystallize the prohibitory norm implicit in the Convention, for example, in articles 3, 5, 6, 7, 10, 11, 12, 13, 14, 15 and 16, and in the State obligations set out in article 2;

(b) A procedural protocol that would recognize the competence of the Committee to receive and consider complaints by individuals and by organizations on behalf of individuals, for violations of rights protected by the Convention;

(c) A protocol that would combine a substantive definition of violence against women and a procedural mechanism to recognize the competence of the Committee to receive and consider complaints by individuals and by organizations on behalf of individuals, of violence against women.

6. The Expert Group recommended that all relevant United Nations organizations should be encouraged to accelerate their work to help to put violence against women on the mainstream agenda of human rights.

7. The Expert Group recommended a draft declaration on violence against women (see appendix) for consideration by the Commission on the Status of Women to be reviewed by the Committee, and then submitted to the General Assembly for immediate adoption.

8. The Expert Group recommended that the Commission should present the draft declaration and its other recommendations to the bodies of the United Nations that are working directly or indirectly on violence against women with a view to accelerating their work on this pervasive and egregious problem, or request that it be included on the agenda of certain United Nations meetings. These bodies and meetings should include, but not be limited to, the following:

(a) The Committee on Crime Prevention and Control, with a view to its consideration by the Ninth United Nations Congress on Prevention of Crime and the Treatment of Offenders in 1995;

(b) The Centre for Human Rights, with a view to its consideration by the World Conference on Human Rights (1993) and by the relevant Geneva-based treaty bodies, such as the Human Rights Committee, established under the International Covenant on Civil and Political Rights, and the Committee against Torture, established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) The secretariat for the International Year of the Family (1994);

(d) The International Conference on Population and Development (1994) and the Fourth World Conference on Women (1995).

B. Summary of discussion

1. Possible need for a new international human rights instrument or mechanism

9. The Expert Group noted that existing instruments had not been adequately applied to the problem of violence against women. No international convention specifically defined violence against women. The lack of a specific definition was thought to be one reason among many for the lack of the effective application of international human rights law to control violence against women.

10. In respect of the Convention on the Elimination of All Forms of Discrimination against Women, the Expert Group noted that information on violence against women or measures taken to address it had been supplied by 40 of the 74 States parties that had presented reports to CEDAW by 31 August 1991. However, it also noted that the reporting was not universal and was uneven in coverage, and that the Convention did not include provisions that were specific to violence against women.

11. General Recommendation No. 12 of CEDAW (eighth session) specifically calls on States parties to report on measures taken to eradicate violence against women. While noting that the general recommendations of the Committee were not legally binding on States parties and were not addressed to States that

were not parties to the Convention, the question was asked whether General Recommendation No. 12 had stimulated an increased interpretation by States parties that violence was implicitly covered by articles of the Convention, thus contributing to the creation of a customary international law regarding the matter. Since General Recommendation No. 12 had been adopted, 25 States had reported on aspects of violence.

12. The Expert Group enquired whether the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women, which contained specific recommendations to Governments relating to violence against women, had provoked a change in government concern with the issue. The Secretariat informed the Expert Group that the Nairobi Strategies, while constituting a normative statement, were not binding on States, and only a few countries had reported on measures relating to the eradication of violence against women in their reports on the review and appraisal of the Strategies.

13. The Expert Group asked whether there had been any indication - through communications procedures in the Commission on Human Rights, the Commission on the Status of Women or human rights treaty bodies having a communications procedure - that other human rights conventions were being interpreted as covering the issue. The Secretariat replied that the only category of violence reflected in communications concerned physical violence against women in detention that was specific to their sex. It was noted, however, that the Commission on the Status of Women was currently reviewing its communications procedure with a view to making it more effective, given that the current procedure had not proved effective.

14. The Expert Group suggested certain strategies as incremental approaches to addressing violence against women. In all its deliberations, the Expert Group was conscious of the importance of strengthening and reinforcing the Convention.

2. Approaches to addressing the issue of violence against women

15. In considering different approaches to the issue of violence against women, the Expert Group was conscious of the importance of using existing human rights conventions, including the 1979 Convention, and of calling on States in the strongest possible way to combat violence against women. The Expert Group considered the following criteria by which the impact of these approaches on State practices on eradicating violence against women might be measured: (a) international legal norms prohibiting violence against women (normative effect); (b) State obligations to eradicate violence against women (obligatory effect); and (c) remedial measures by States to rehabilitate victims of gender-based violence (remedial effect).

16. The Expert Group considered those criteria as possible ways of measuring the effect of different approaches, but did not consider them exhaustive. Effects would vary from country to country and would depend on a number of factors, such as the will of States to eradicate violence against women and whether a country was a State party to a relevant human rights convention.

17. The Expert Group considered the following short- and long-term approaches to eradicating violence against women:

(a) Recommendations for reporting on violence against women to the Committee on the Elimination of Discrimination against Women;

(b) A declaration on violence against women;

(c) Appointment of a special thematic rapporteur on violence against women;

(d) Communications to the Commission on the Status of Women;

(e) An optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(f) A separate convention on violence against women.

(a) Recommendations for reporting on violence against women to the Committee on the Elimination of Discrimination against Women

18. The Expert Group considered ways of accelerating efforts to improve reporting on the egregious and pervasive nature of violence against women to CEDAW. It was noted that CEDAW, at its session in 1992, would consider a report analysing information on violence against women, taken from the reports of States parties to the Convention and, as a result, might elaborate upon its General Recommendation No. 12. It was agreed that an elaboration of a general recommendation on violence against women might include legal prohibition of such violence; programmes for preventing violence against women; programmes to provide shelter and other support services for victims of violence; research on the causes, consequences and magnitude of the problem, and the actual success of programmes to prevent and remedy violence; explanations on how specific articles of the 1979 Convention applied to violence against women; and measures for preventing, investigating and punishing violence against women.

19. A general recommendation could be formulated to permit its use by other human rights treaty bodies, such as the Human Rights Committee, to assist in the interpretation of relevant provisions in other human rights conventions, such as the International Covenant on Civil and Political Rights, adopted by the General Assembly in its resolution 2200 A (XXI), annex, of 16 December 1966, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 39/46, annex, of 10 December 1984.

(b) A declaration on violence against women

20. The Expert Group considered different ways of crystallizing the international norm of the prohibition of violence against women, such as general principles, minimum standards and declarations. It concluded that a declaration (see appendix) would emphasize further the pervasive and egregious nature of violence against women. Also, it would apply to the States that had not ratified the 1979 Convention or other international human rights instruments, to all agencies and human rights treaties of the United Nations.

(c) Special thematic rapporteur

21. The Expert Group considered the possibility of a special thematic rapporteur on violence against women. A special rapporteur could be particularly important for those countries that had not ratified the 1979 Convention, had ratified it with extensive reservations or had not ratified other relevant human rights treaties. A special rapporteur could also allow for input from

non-governmental organizations. Given the pervasive nature of violence against women, it was stressed that a special rapporteur could relate to countries that were not States parties to human rights treaties. A means by which a special rapporteur could report to both the Commission on the Status of Women and the Commission on Human Rights was considered important for the purpose of stressing that violence against women violates human rights.

22. The terms of reference for a special rappo eur on violence against women could include, but should not be limited to determining the pervasive and egregious nature of violence against women; receiving information from Governments, intergovernmental institutions, non-governmental organizations and any other relevant sources; responding effectively to information of violence against women; and recommending measures to prevent continuing violence against women.

23. The Expert Group suggested that the mandate of the special rapporteur should not overlap the mandates of the Working Group on Contemporary Forms of Slavery, the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography and the Working Group on Traditional Practices Affecting the Health of Women and Children, but could take into consideration, where appropriate, the findings of those special rapporteurs and working groups. One expert mentioned that the Commission should take special account of the institutional and political implications of appointing a special rapporteur.

(d) Communications to the Commission on the Status of Women

24. The Expert Group emphasized the importance of strengthening the communicatiors procedure, in the light of the report of the Secretary-General (E/CN.6/1991/10), the debate during the thirty-fifth session of the Commission on the Status of Women and its draft resolution referring to communications concerning the status of women, the consideration of which was deferred to the Commission's thirty-sixth session. Through an enhanced communications procedure, the Commission could be better advised on the many manifestations of violence against women and develop appropriate measures to encourage Governments to accelerate their work to prevent and remedy violence.

(e) Optional protocol

25. In the event that the above-mentioned approaches should prove ineffective in eliminating violence against women, the Expert Group suggested the consideration of an optional protocol or protocols to the Convention on the Elimination of All Forms of Discrimination against Women. Optional protocols would be open for ratification or accession by those countries that were States parties to the Convention.

26. The Expert Group considered three different types of protocol. It was noted that States might not wish to adhere to a substantive protocol, but might be willing to adhere to a procedural protocol with regard to the existing rights protected by the 1979 Convention.

(f) A separate convention on violence against women

27. The Expert Group considered the possibility of a separate convention on violence against women as a long-term process and one that should be pursued in the event that the above-mentioned approaches proved unsuccessful in eliminating violence against women.

3. Possible elements of an international instrument on violence against women

28. Central to the discussion of possible elements for such an international instrument was the concept of violence against women. A number of conceptual approaches were made available to the Expert Group, including one provided by the Economic Commission for Africa, one developed at an expert group meeting organized by the Inter-American Commission of Women (CIM) of the Organization of American States, one provided in a working paper prepared by the Government of Canada and one provided in a recommendation of the Council of Europe, together with elements provided in expert reports made available.

29. Views were expressed that the elements of a framework for a definition should be identified. The definition of violence contained in the CIM draft, including bracketed material still to be agreed upon, stated:

> "... violence shall be understood to mean any act, omission or conduct by means of which physical, sexual or mental suffering is inflicted, directly or indirectly, through deceit, seduction, threat, [harassment,] coercion, or any other means, on any woman with the purpose or effect of intimidating, punishing or humiliating her or of maintaining her in sex-stereotyped roles, or of denying her human dignity, sexual self-determination, physical, mental and moral integrity or of undermining the security of her person, her self respect or her personality, or of diminishing her physical or mental capacities. [Violence shall also be understood to encompass any act, omission or conduct having the above purposes or effects, whether or not it causes physical or mental injury or suffering.]"

30. A number of experts found the proposed definition to be too wide-ranging. It was feared that such a definition would make it difficult for parties to understand their responsibilities in terms of reporting and compliance. In that context, some experts and observers questioned the wisdom of attempting to define violence beyond its physical manifestations. Discussion generated a number of elements that might be considered in developing a definition: (a) the importance of ensuring the respect for the integrity and security of the person; (b) the physical, sexual and psychological aspects of violence; (c) avoidance of ethnocultural justifications for violence; (d) the systemic nature of violence; (e) the criminal aspects of violence; and (f) the respective merits of a general or specific definition, including restricting it to physical violence.

31. The need for an instrument whose validity would endure was also highlighted, as was the importance of identifying key principles and of making States parties responsible and accountable.

32. The Expert Group decided that the most appropriate form for organizing the elements of an international instrument would be a draft declaration. The draft declaration (see appendix) that was agreed upon by the Expert Group took into account some of the comments and suggestions made by observers.

33. With regard to principles, the Expert Group included a statement of the rights that women should have as a result of other international instruments that were particularly relevant in terms of the issue of violence. The meaning of the concept of a right to personal integrity was discussed. It was noted that it reflected situations under which women might be forced to take

decisions against their personal values which, therefore, affected their personal self-esteem. Examples discussed by the experts concerning violence in the context of their countries included situations where a girl was forced into marriage against her will, where a woman's choice in respect to her reproductive health and self-determination was disregarded and where a mother might be forced to agree that her daughter should be circumcised even though the mother believed the practice to be wrong and harmful.

34. The relationship of violence to the right to private and family life, as expressed in the International Covenant on Civil and Political Rights, was discussed in terms of avoiding an unnecessary reference to the family as an institution. While the term "family life" had been used in the Covenant, it was suggested that the use of the term "violence-free private and family life" better conveyed the relationship between violence and that particular right.

35. In terms of the definition used in the draft declaration, particularly the list of types of violence included as examples, a number of views were expressed. With respect to the inclusion of the term "degrading portrayals of women in the media", one observer noted that the consideration of that as a form of violence would conflict with constitutional provisions in some countries relating to freedom of the press, should any remedial measure based on law be proposed. However, as was pointed out by one of the experts, when rights to freedom of expression conflicted with women's rights, it was all too often that women's rights were compromised. In a number of countries where freedom of expression and other human rights come into conflict, courts had established limits to the right of freedom of expression.

36. Similarly, with regard to the term "forced prostitution", the representative of the Centre for Human Rights noted that the current practice of the Working Group on Contemporary Forms of Slavery, as well as the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the General Assembly in its resolution 317 (IV), annex, of 2 December 1949, held that any form of prostitution, whether ostensibly forced or not, was considered to have been compelled. The Expert Group was well aware of this Convention, and they noted the limited number of ratifications. The Expert Group noted that there were significant problems in dropping the term "forced" in relation to prostitution.

37. With regard to measures to be taken under the declaration, it was stated that they should refer both to the national and the international level. The Expert Group took the view that the measures that came within the responsibility of Governments included the development of a plan of action, the elaboration of legislation to include penal and civil sanctions, the training of law enforcement personnel and the compilation of relevant statistics.

38. At the international level, international and regional cooperation was necessary. The Expert Group noted that coordination and exchange of information within the United Nations system and the formulation of guidelines or the elaboration of manuals, among other things, would be conducive to eliminating violence against women.

Appendix

DRAFT DECLARATION ON VIOLENCE AGAINST WOMEN

The General Assembly,

Recognizing the urgent need for the universal application to women of the principles of integrity, dignity, security, liberty and equality of all human persons,

Noting that these principles are enshrined in international instruments, including inter alia the Universal Declaration of Human Rights, a/ the International Covenants, b/ the Convention on the Elimination of All Forms of Discrimination against Women c/ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, d/ but are not purposefully being applied to women in relation to violence,

Affirming that violence against women is a violation of human rights,

Recognizing that violence against women is also a manifestation of historically unequal power relations, which have led to domination over and discrimination against women, and the prevention of their full advancement,

Recalling resolution 1990/15, annex, of 24 May 1990 of the Economic and Social Council, which recognizes that violence against women in the family and society is pervasive and cuts across lines of income, class and culture, and must be matched by urgent and effective steps to eliminate its incidence,

Recalling further resolution 1991/18 of 30 May 1991 of the Economic and Social Council, which recommended the development of a framework for an international instrument that would explicitly address the issue of violence against women,

Noting that as a result of the advocacy, mobilization and action by women's movements, the nature, severity and magnitude of this problem is increasingly being recognized,

Alarmed at the debilitating effects of continuing and endemic violence on the legal, social, political and economic status of women in society,

Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as envisioned in the Nairobi Forward-looking Strategies for the Advancement of Women, e/ which recommended a set of measures to combat violence against women, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

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a/ General Assembly resolution 217 A (III) of 10 December 1948.
b/ General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.
c/ General Assembly resolution 34/180, annex, of 18 December 1979.
d/ General Assembly resolution 39/46, annex, of 10 December 1984.
e/ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, Kenya, 15-26 July 1985 (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.

Convinced that in the light of the above there is need for (a) a more comprehensive definition of violence against women; (b) a clear statement of the rights to be applied to ensure the eradication of violence against women in circumstances of threatened or actual violence; (c) a commitment by States in respect of their responsibilities, and (d) a commitment by the international community towards the eradication of violence against women.

Solemnly proclaims the Declaration annexed hereto.

Annex

DECLARATION ON VIOLENCE AGAINST WOMEN

Article 1

Violence is defined as any act, omission, controlling behaviour or threat, in any sphere, that results in, or is likely to result in, physical, sexual or psychological injury to women.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including wife battering, incest, dowry-related violence, marital rape, female circumcision, non-spousal violence, financial discrimination and exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation in the workplace, trafficking in women and forced prostitution, and the degrading representation of women in the media;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the guarantee, protection and benefit of all human rights regardless of religious, cultural, economic or political considerations. These are, inter alia:

Right to life

Right to liberty

Right to physical, mental and personal integrity

Right to personal security and safety

Right to a violence-free private and family life

Right to be free from all forms of discrimination

Right to effective protection by the law and law enforcement agencies

Right to health and other appropriate services for victims of violence

Right to protection against torture, cruel, inhuman or degrading treatment or punishment

Right to work in a violence-free environment.

Article 4

States, intergovernmental and non-governmental organizations and women's movements are called upon to recognize the principles set forth herein and to ensure their observance by means of the following appropriate measures:

The responsibilities of States shall include obligations:

(a) To condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, measures to be adopted to prevent, punish and eliminate this violence. Thus, States undertake to develop, with women's groups and other non-governmental organizations, a plan of action that will include preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of gender-insensitive laws and interventions;

(b) To include in domestic legislation penal and civil sanctions to punish and redress the wrongs caused to women who are subjected to violence and to provide them with just and effective legal remedies, compensation and rehabilitation;

(c) To take the measures necessary to ensure the gender-sensitive training of all officials who implement the policy of preventing, eradicating, investigating and punishing violence against women. States will provide specialized assistance to women who are subject to violence and will ensure support structures, including compensation and rehabilitation;

(d) To adopt all appropriate measures to modify the social and cultural patterns of conduct of men and women by raising awareness, providing education on gender relations and the development of women to their full potential, and encouraging the communication media to enhance respect for the dignity of a woman as a person;

(e) To compile statistics relating to the prevalence of different forms of violence against women and to encourage research on the nature, seriousness and consequences of violence against women and on the efficacy of administrative or other measures used to eradicate violence against women; these statistics and findings of the research will be made public;

(f) To exercise due diligence to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or are acts by private persons condoned by the State.

The responsibilities of international organizations shall include obligations:

(a) To foster international and regional cooperation with a view to exchanging experiences and financing programmes relating to violence against women;

(b) To promote meetings and seminars with the aim of creating and raising the awareness among all persons in respect of the issue of violence against women;

(c) To foster coordination and exchange within the United Nations system between human rights treaty bodies to effectively address the matter;

(d) To encourage coordination between United Nations bodies and agencies to incorporate the issue of violence against women into ongoing programmes, particularly with reference to groups with a high risk of violence, such as disabled and elderly women, women in detention, refugee women, women of ethnic minorities and migrant women;

(e) To promote the formulation of guidelines or manuals relating to the problem of violence against women, taking into account the measures mentioned herein;

(f) To urge member States to realize their responsibilities in the elimination of violence against women and to ensure that they take the necessary steps to enforce the human rights enshrined in international instruments, so that everyone everywhere condemns violence against women.